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In The

SUPREME COURT OF THE UNITED STATES

October Term, 1966

No. 617

DOROTHY HORVATH,

Petitioner,

vs.

CITY OF MILWAUKEE,
a municipal corporation,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF WISCONSIN

DOROTHY E. HORVATH, *pro se*
115 E. Fairmount Ave.
Whitefish Bay, Wisconsin

HAMMERSMITH-KORTMEYER CO. MILWAUKEE

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JURISDICTION

The petitioner asserts that this Court has jurisdiction for the reason that the decision of the Wisconsin Supreme Court below denies the rights guaranteed the petitioner under both the Wisconsin Constitution and the United States Constitution. Certiorari should be granted under Rule 19.

QUESTIONS PRESENTED

1. Does imprisonment to make effective the imposition of a fine violate constitutional rights which prohibit involuntary servitude unless duly convicted of a crime?

2. Is mere imprisonment, without the imposition of labor, servitude?

STATEMENT

Petitioner was charged with violating various ordinances regulating motor vehicle parking. Petitioner appeared before County Court-Traffic Division, Milwaukee, Wisconsin, presided over by the Honorable John E. Kreuger, on March 2nd, 1964. Petitioner was not represented by counsel. Petitioner did, however, raise constitutional objection to the proceedings which the trial judge duly noted on the record.

The court proceeded with immediate trial and found the petitioner guilty. The judgment was entered ordering the petitioner to immediately pay a fine of $56 plus costs of $55.

Petitioner inquired whether she could appeal the decision were the fine paid. The city attorney stated that if petitioner posted a bond, this would be forfeited on the first appeal and she would lose all rights of appeal to a higher court.

Petitioner then refused to post bond; petitioner insisted that this court did not have the power to imprison because no crime had been committed. Petitioner was then sentenced to fifty-five days in a city jail. Petitioner was committed to jail forthwith.

After three days in the city jail, petitioner secured counsel who informed her that it would be necessary to post cash bond in order to appeal. Cash bond was posted. Petitioner was released. An appeal was made to Circuit Court-Criminal Division, Branch 12, the Honorable Judge John L. Coffey presiding.

Judgment was affirmed in the Circuit Court, April 16th, 1965. The court ruled that the ordinance in this case was constitutional.

Petitioner appealed to the Supreme Court, State of Wisconsin, which on July 1, 1966 affirmed the judgment of the lower court.

ARGUMENT

This case raised the federal issue in the lower courts in relation to the constitutionality of Milwaukee Ordinance Sec. 101-321 which permits imprisonment upon failure to pay a fine, which authority is contained in Sec. 66.12, Wisconsin Statutes.

The case is very simply this: that imprisonment to make effective the imposition of a fine removes from the petitioner the freedom to determine one's acts, conditions of living, etc., and places the petitioner in a condition of involuntary servitude, until the conditions prescribed by the municipality or court are complied with.

Webster's definition of servitude quoted in *Hodges v. U.S.*, 203 US 1, is:

> "Service required as a punishment for a crime. Servitude a more or less rhetorical term, implies in general lack of liberty to do as one pleases, but specifically, lack of freedom to determine one's acts, laws, conditions of living, etc. State of being subject to a master."

The Wisconsin Supreme Court feels that imprisonment without labor is more analogous to an execution on the body of the petitioner and in no way constitutes servitude. To quote Webster again:

> "Servitude implies absolute and enforced subjugation to anothers will, synonymous to serf, menial, prisoner; antithesis, freedom, liberty, independence."

Under the case considered, the conditions imposed upon the petitioner clearly constituted a denial of liberty and freedom in order to force payment of the imposed fine. It provided the municipality with a bludgeon to extract the fine, barring any consideration as to the question of reasonableness.

The lower court has maintained that unless labor is required, imprisonment itself does not constitute servitude. Petitioner submits that a broader interpretation of the term servitude should be applied. In the case of *U.S. v. Gaskin,* 320 U.S. 525, it was held that even though the party imprisoned was not required to perform labor that his imprisonment did constitute involuntary servitude and violated his rights under the 13th Amendment. This seems a much more realistic and meaningful interpretation.

It is respectfully submitted that under the present narrow interpretation applied by the State and Local Courts, little impetus is provided to eliminate the causes of conditions; while harsh and questionable treatment is applied to the effects in an attempt to curb difficult local problems. As in the present case our treasured freedoms become secondary to local expediency.

CONCLUSION

That there has been an infringement upon the constitutional guaranteed liberties of the petitioner which afford a basis for jurisdiction of this court. The petition should therefore be granted.

Respectfully submitted,

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